CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: J05003-0018
Claimant	: IMC Shipping Co. Pte. Ltd., Ayu Navigation Sdn Bhd, and The Swedish Club
Type of Claimant	: Corporate (US)
Type of Claim	: Limit of Liability
Claim Manager	: [redacted]
Amount Requested	: $8,242,142.53

I. INCIDENT

The M/V SELENDANG AYU (the vessel) was on a voyage from Seattle to China when, on the morning of December 6, 2004[1] while operating in adverse weather conditions, the crew shut down the main engine as a result of a casualty to the No. 3 cylinder. The vessel drifted toward Unalaska Island and eventually grounded on December 8 on a rocky shelf on the north shore of Unalaska Island, northeast of Spray Cape. The grounding ruptured the vessel's bottom tanks, releasing approximately 330,000 gallons[2] of bunkers into the waters off Unalaska Island.

II. CLAIMANT AND CLAIM

The Claimants are the OPA responsible parties and their insurers. Ayu Navigation Sdn Bhd was the owner of the vessel and IMC Shipping Co. Pte. Ltd. was the operator of the vessel. Sveriges Angfartygs Assurans Forenging (The Swedish Club), members of the International Group of Protection and Indemnity Clubs ("International Group"), and the International Group's re-insurers were their subrogated underwriters.

III. PROCEDURAL BACKGROUND:

Pursuant to 33 U.S.C. § 2708(a)(2) Claimant presented a claim to the Oil Spill Liability Trust Fund (OSLTF or the Fund) seeking a limit on its liability for the incident. At the time of the incident the applicable limit per ton was $600; the gross tonnage for the *Selendang* was 39,755 gross ton; therefore, its limit on liability, if granted, was $23,853,000.00. The Claims Adjudication Division conducted an analysis of evidence and facts and determined that IMC Shipping Co. Pte. Ltd, et al demonstrated entitlement to its limit of liability on 27 January 2012.

IV. REMOVAL COST CLAIM

Claimant asserts that it incurred approximately $148,651,185.13 in removal costs and hired 153 vendors to conduct the removal actions. The removal actions at the site ended on or about 23 June 2006, per a Pollution Report (PolRep) #110 dated 27 June 2006 issued by the FOSC for this incident. As required by 33 CFR 136.203, the RP worked closely with the FOSC throughout the response; MSO Anchorage provided FOSC coordination.

Based on the magnitude of the costs associated with this response, the NPFC anticipated that adjudication of this claim will be lengthy. Claimant and the NPFC agreed to adjudicate the costs on a phased basis. The NPFC separated the claim into smaller claims, based on vendors. Each smaller claim bears a separate claim number and after adjudication the NPFC will offer an

[1] *See,* Claimant Submission, Attachment 24, Government's Videotape Deposition of [redacted] Vol. I, 00074.
[2] *See,* Claimant's submission letter, page 3, paragraph 3.

amount for that claim. Claimant may accept the offer or request reconsideration pursuant to the Claims Regulations at 33 CFR Part 136.

V. SEVENTH REMOVAL COSTS CLAIM DETERMINATION[3]

The NPFC adjudicated this seventh claim (J05003-0018) in the amount of 8.24M. The RP, through its legal representative, provided 9 binders of invoices to document the $8.24M in removal costs claimed in this seventh determination package for costs associated with the response actions performed by CCI, Inc. CCI provided response workers on both the MT Mitchell and the Spirit of Glacier Bay vessels who performed cleanup operations and equipment operations as crew of these two chartered vessels. The NPFC claims manager reviewed each and every submitted invoice as well as every "daily" sheet submitted to substantiate the invoices. Additionally, the NPFC claims manager reviewed the payment record against the claimed costs for each invoice.

The review of the actual costs, invoices and dailies focused on (1) whether the actions were taken to prevent, minimize or mitigate the effects of the incident; (2) whether the costs were incurred as a result of these actions; (3) whether the actions taken were determined by the FOSC to be consistent with the NCP or directed by the FOSC, and (4) whether the costs were adequately documented.

Please see the table below for an itemization of the vendor invoices which make up this seventh payment claim determination. This determination is only deemed full and final for the identified vendor invoices listed below.

Vendor	Invoice #	Amount Claimed	NPFC Approved	NPFC Denied
CCI	24701	$79,770.00	$79,770.00	$0
CCI	24702	$38,060.00	$38,060.00	$0
CCI	24712	$47,820.00	$47,820.00	$0
CCI	24752	$872.00	$872.00	$0
CCI	24913	$364,244.00	$364,244.00	$0
CCI	24926	$3,389.80	$3,389.80	$0
CCI	24925	$3,349.45	$3,349.45	$0
CCI	24931	$417,540.00	$415,928.00	$1,612.00
CCI	24942	$416,864.00	$414,884.00	$1,980.00
CCI	24982	$416,588.00	$415,268.00	$1,320.00
CCI	24991	$905.45	$905.45	$0
CCI	25001	$392,680.00	$391,384.00	$1,296.00

[3] The NPFC adjudicated the first removal cost claim, Claim Number J05003-001, in the amount of $24,500,453.89. The NPFC deducted the statutory limit on liability of $23,853,000.00 and offered $546,484.54 as full and final compensation on or about May 21, 2012. Claimants accepted the offer on June 7, 2012. The NPFC adjudicated the second removal claim, Claim Number J05003-003, and offered $ 2,168,445.20 to the Claimants on June26, 2012. Claimants accepted the offer on August 6, 2012. The NPFC adjudicated the third removal claim, Claim Number J05003-0004, and offered $3,668,595.70 to the Claimants on July 3, 2012. Claimants accepted the offer on August 6, 2012. The NPFC adjudicated the fourth removal claim, Claim Number J05003-0015, and offered $23,103,264.96 to the Claimants on August 20, 2012. Claimants accepted the offer on September 11, 2012. The NPFC adjudicated the fifth removal claim, Claim Number J05003-0016, and offered $15,611,776.98 to the Claimants on October 17, 2012. Claimants accepted the offer on December 6, 2012. The NPFC adjudicated the sixth removal claim, Claim Number J05003-0017, and offered $9,565,222.57 to the Claimants on November 20, 2012. Claimants accepted the offer on November 28, 2012.

CCI	25030	$415,736.00	$415,736.00	$0
CCI	25049	$434,020.00	$434,020.00	$0
CCI	25063	$442,876.00	$442,876.00	$0
CCI	25083	$12,611.16	$12,298.82	$312.34
CCI	25114	$415,844.00	$415,184.00	$660.00
CCI	25134B	$429,984.00	$428,004.00	$1,980.00
CCI	25158A	$5,958.54	$5,548.82	$409.72
CCI	25165	$442,660.00	$442,660.00	$0
CCI	25169	$548.09	$545.79	$2.30
CCI	25176	$459,184.00	$458,332.00	$852.00
CCI	25205	$430,796.00	$430,796.00	$0
CCI	25228	$407,468.00	$407,468.00	$0
CCI	25234	$1,487.76	$1,487.76	$0
CCI	25281	$425,816.00	$425,816.00	$0
CCI	25308	$265,476.00	$264,148.00	$1,328.00
CCI	25338	$221,972.00	$221,972.00	$0
CCI	25348	$186,540.00	$186,540.00	$0
CCI	25387	$214,656.00	$214,656.00	$0
CCI	25414	$204,772.00	$204,772.00	$0
CCI	25429	$205,596.00	$205,596.00	$0
CCI	25488	$33,968.00	$33,968.00	$0
CCI	25626	$13,178.69	$13,178.69	$0
CCI	26051	$7,208.00	$7,208.00	$0
CCI	26058	$112,548.00	$112,548.00	$0
CCI	26072	$115,308.00	$115,308.00	$0
CCI	26086	$75,348.00	$75,348.00	$0
CCI	26098	$539.59	$539.59	$0
CCI	26103	$76,668.00	$76,668.00	$0
CCI	26104	$1,292.00	$1,292.00	$0
Total		**$8,242,142.53**	**$8,230,390.17**	**$11,752.36**

Claimant's sum certain for this claim is $8,424,142.53.

The NPFC has determined that $11,752.36 is not compensable from the OSLTF and will offer the Claimants $8,230,390.17. As noted above, the NPFC deducted the RP's statutory limit on liability from the amount determined to be compensable under claim # J05003-001. Thus, $8,230,390.17 is payable from the Oil Spill Liability Trust Fund.

VI. APPLICABLE LAW:

Under OPA 90, at 33 USC § 2702(a), responsible parties are liable for removal costs and damages resulting from the discharge of oil into navigable waters and adjoining shorelines, as described in Section 2702(b) of OPA 90. A responsible party's liability will include "removal costs incurred by any person for acts taken by the person which are consistent with the National Contingency Plan". 33 USC § 2702(b)(1)(B).

"Oil" is defined in relevant part, at 33 USC § 2701(23), to mean "oil of any kind or in any form, including petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil".

The Oil Spill Liability Trust Fund (OSLTF), which is administered by the NPFC, is available, pursuant to 33 USC §§ 2712(a)(4) and 2713 and the OSLTF claims adjudication regulations at 33 CFR Part 136, to pay claims for uncompensated removal costs that are determined to be consistent with the National Contingency Plan and uncompensated damages. Removal costs are defined as "the costs of removal that are incurred after a discharge of oil has occurred or, in any case in which there is a substantial threat of a discharge of oil, the costs to prevent, minimize, or mitigate oil pollution from an incident". 33 U.S.C. § 2701(31).

The responsible party for a vessel or facility from which oil is discharged, or which poses a substantial threat of discharge of oil, may assert a claim for removal costs and damages under section 2713 only if the responsible party demonstrates that it is entitled to a defense to liability under section 2703 or to a limitation of liability under section 2704. 33 USC § 2708(a)(1) and (2).

33 U.S.C. §2713(d) provides that "If a claim is presented in accordance with this section, including a claim for interim, short-term damages representing less than the full amount of damages to which the claimant ultimately may be entitled, and full and adequate compensation is unavailable, a claim for the uncompensated damages and removal costs may be presented to the Fund."

Under 33 CFR 136.105(a) and 136.105(e)(6), the claimant bears the burden of providing to the NPFC, all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim.

Under 33 CFR 136.105(b) each claim must be in writing, for a sum certain for each category of uncompensated damages or removal costs resulting from an incident. In addition, under 33 CFR 136, the claimant bears the burden to prove the removal actions were reasonable in response to the scope of the oil spill incident, and the NPFC has the authority and responsibility to perform a reasonableness determination. Specifically, under 33 CFR 136.203, "a claimant must establish -

(a) That the actions taken were necessary to prevent, minimize, or mitigate the effects of the incident;
(b) That the removal costs were incurred as a result of these actions;
(c) That the actions taken were determined by the FOSC to be consistent with the National Contingency Plan or were directed by the FOSC."

Under 33 CFR 136.205 "the amount of compensation allowable is the total of uncompensated *reasonable* removal costs of actions taken that were determined by the FOSC to be consistent with the National Contingency Plan or were directed by the FOSC. Except in exceptional circumstances, removal *activities* for which costs are being claimed must have been coordinated with the FOSC." [Emphasis added].

VII. DETERMINATION OF LOSS:

A. *Findings of Fact:*

1. MSO Anchorage, as the FOSC for this incident, determined that the actions undertaken by the Claimant are deemed consistent with the NCP. 33 U.S.C. §§ 2702(b)(1)(B) and 2712(a)(4);
2. The incident involved the discharge of "oil" as defined in OPA 90, 33 U.S.C. § 2701(23), to navigable waters;
3. A Responsible Party was identified. 33 U.S.C. § 2701(32).

4. The claim was submitted within the six-year period of limitations for claims. 33 U.S.C. § 2712(h)(2);
5. The NPFC Claims Manager reviewed all documentation submitted with the claim and determined which removal costs were incurred for removal actions in accordance with the NCP and whether the costs for these actions were reasonable and allowable under OPA and 33 CFR § 136.205. The Claims Manager also identified denied costs and the grounds for denial.

B. ***Analysis:***

NPFC CA reviewed the actual cost invoices and dailies to confirm that the Claimant had obtained all rights, claims and causes of actions for the costs claimed. The review focused on: (1) whether the actions taken were compensable "removal actions" under OPA and the claims regulations at 33 CFR 136 (e.g., actions to prevent, minimize, mitigate the effects of the incident); (2) whether the costs were incurred as a result of these actions; (3) whether the actions taken were determined by the FOSC, to be consistent with the NCP or directed by the FOSC, and (4) whether the costs were adequately documented and reasonable.

The NPFC has determined that the majority of costs incurred by the Claimant in this sixth claim determination were reasonable and necessary to mitigate the effects of the incident. Upon review of the information provided by the Claimant, the NPFC has determined that the costs were billed in accordance with the rate schedules and/or contracts/charter agreements in place at the time the services were rendered, unless otherwise indicated below, and were determined to be consistent with the NCP.

Itemizations of denied costs:

- Invoice # 24931 (on 4/28/05) - $952.00 for [redacted] who is noted on the sign in sheet as on bed rest and $660.00 for [redacted] who is not signed in;
- Invoice # 24942 (on 5/2/05) - $660.00 for [redacted] who is noted to be at medical this date and returns on 5/3/05 and $660.00 for [redacted] who is also noted at medical this date. On 5/6/05, [redacted] is not noted on any sign in sheet therefore $600.00 denied;
- Invoice # 24982 (on 5/11/05) - $660.00 for [redacted] and $660.00 for [redacted] – GMS did not allow these costs therefore they are not uncompensated;
- Invoice # 25001 (on 5/16/05) - $376.00 for [redacted] who had no hours assigned this date; $544.00 for [redacted] who had no hours assigned this date; and $376.00 for [redacted] who had no hours assigned this date;
- Invoice # 25083 - $1.00 long distance charge denied as not allowed per contract, $103.67 is denied for restaurant charges through Grand Aleutian where no receipts were provided, $103.16 denied for long distance/ laundry charges not allowed per contract and no receipts for restaurant charges, $28.05 denied for long distance and newspaper charges not allowed by contract, $3.50 for long distance/laundry not allowed per contract, $9.05, $3.00, and $6.25 denied for long distance/faxes/laundry not allowed per contract, $13.25 denied for room service with no receipts, and $41.41 in markup on denied costs;
- Invoice # 25114 - $660.00 for [redacted] who was marked off the daily sign in sheet;
- Invoice # 25134B - $660.00 for [redacted] who was hurt on the job. GMS was unable to provide whether work comp claim was filed and paid for this person, $660.00 for [redacted] s tailgate safety sheet shows this person was in Dutch Harbor having bad tooth checked, and $660.00 for [redacted] n 6/23 for injury;

- Invoice # 25158A - $409.72 denied for miscellaneous expenses that are either not covered under contract or lack of receipts to support charge. See spreadsheet for details;
- Invoice # 25176 - $852.00 for [redacted] Not on sign in and no evidence this person was working;
- Invoice # 25308 - $952.00 for [redacted] Not on sign in sheet with a note that this person hurt his foot and $376.00 for [redacted] Didn't work this date;

OVERALL DENIED COSTS = $11,752.36

VIII. SUMMARY

All costs determined payable included in this determination have been reviewed and determined to be compensable as presented and in accordance with 33 USC §§ 2712(a)(4) and 2713 and the OSLTF claims adjudication regulations at 33 CFR Part 136.203 and 136.205. The costs determined to be payable are for uncompensated removal costs that are determined to be consistent with the National Contingency Plan.

The NPFC hereby determines that the NPFC offers, and the OSLTF is available to pay, **$8,230,390.17** as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # J05003-0018.

AMOUNT: $8,230,390.17

Claim Supervisor: [redacted]

Date of Supervisor's review: *12/13/12*

Supervisor Action: ***Approved***

Invoice	Invoice Amount	Amount paid by GMS	NPFC Approved Amount	NPFC Denied Amount
24701	$79,770.00	$79,770.00	$79,770.00	$0.00
24702	$38,060.00	$38,060.00	$38,060.00	$0.00
24712	$47,820.00	$47,820.00	$47,820.00	$0.00
24752	$872.00	$872.00	$872.00	$0.00
24913	$364,244.00	$364,244.00	$364,244.00	$0.00
24926	$4,500.00	$3,389.80	$3,389.80	$0.00
24925	$4,500.00	$3,349.45	$3,349.45	$0.00
24931	$417,540.00	$417,540.00	$415,928.00	$1,612.00
24942	$416,864.00	$416,864.00	$414,884.00	$1,980.00
24982	$416,588.00	$416,588.00	$415,268.00	$1,320.00
24991	$905.45	$905.45	$905.45	$0.00
25001	$392,680.00	$392,680.00	$391,384.00	$1,296.00
25030	$415,736.00	$415,736.00	$415,736.00	$0.00
25049	$436,468.00	$434,020.00	$434,020.00	$0.00
25063	$442,876.00	$442,876.00	$442,876.00	$0.00
25083	$18,899.92	$12,611.16	$12,298.82	$312.34
25114	$415,844.00	$415,844.00	$415,184.00	$660.00
25134B	$429,984.00	$429,984.00	$428,004.00	$1,980.00
25158A	$5,958.54	$5,958.54	$5,548.82	$409.72
25165	$442,660.00	$442,660.00	$442,660.00	$0.00
25169	$548.09	$548.09	$545.79	$2.30
25176	$459,812.00	$459,184.00	$458,332.00	$852.00
25205	$431,648.00	$430,796.00	$430,796.00	$0.00
25228	$408,696.00	$407,468.00	$407,468.00	$0.00
25234	$3,642.42	$1,487.76	$1,487.76	$0.00
25281	$425,816.00	$425,816.00	$425,816.00	$0.00
25308	$265,476.00	$265,476.00	$264,148.00	$1,328.00
25338	$221,972.00	$221,972.00	$221,972.00	$0.00
25348	$187,880.00	$186,540.00	$186,540.00	$0.00
25387	$214,656.00	$214,656.00	$214,656.00	$0.00
25414	$206,588.00	$204,772.00	$204,772.00	$0.00
25429	$205,596.00	$205,596.00	$205,596.00	$0.00
25488	$33,968.00	$33,968.00	$33,968.00	$0.00
25626	$14,296.93	$13,178.69	$13,178.69	$0.00
26051	$7,208.00	$7,208.00	$7,208.00	$0.00
26058	$112,548.00	$112,548.00	$112,548.00	$0.00
26072	$115,308.00	$115,308.00	$115,308.00	$0.00
26086	$75,348.00	$75,348.00	$75,348.00	$0.00
26098	$539.59	$539.59	$539.59	$0.00
26103	$76,668.00	$76,668.00	$76,668.00	$0.00
26104	$1,292.00	$1,292.00	$1,292.00	$0.00
TOTAL	**$8,262,276.94**	**$8,242,142.53**	**$8,230,390.17**	**$11,752.36**